

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRINITY GLASS INTERNATIONAL, INC., a
Washington corporation,

Plaintiff,

v.

ODL, INCORPORATED, a Michigan
corporation,

Defendant.

Case No. 08-5018 RJB

MINUTE ORDER SETTING TRIAL,
PRETRIAL DATES AND ORDERING
MEDIATION

JURY TRIAL set for 9:30 a.m. on

March 9, 2009

Claim Construction Hearing set for 9:30 a.m. on

September 5, 2008

Deadline for Addition of Additional Parties and Amending
Pleadings

May 17, 2008

Disclosure of Asserted Infringement Claims and Contentions

May 5, 2008

Disclosure of Preliminary Non-Infringement and Invalidity
Contentions

June 4, 2008

Reports from Experts Witnesses, if any, Regarding Claim
Construction Hearing

June 19, 2008

Rebuttal Experts Reports, if any, Regarding Claim Construction
Hearing

July 7, 2008

Exchange of Proposed Terms, Claim Elements and Preliminary
Claim Chart

July 14, 2008

Joint Claim Construction and Prehearing Statement

August 3, 2008

1	Opening Claim Construction Briefs Due (24 page limit)	August 13, 2008
2	Response Claim Construction Briefs Due (24 page limit)	September 2, 2008
3	Claim Construction Hearing set for 9:30 a.m. on	September 5, 2008
4		
5	Disclosure of expert testimony under FRCP 26(a)(2)	October 3, 2008
6	All motions related to discovery must be FILED by	October 20, 2008
7	Discovery COMPLETED by	November 9, 2008
8	All dispositive motions must be FILED by	December 9, 2008
9	Settlement conference per CR 39.1(c)(2) HELD no later than	January 8, 2009
10	Mediation per CR 39.1(c)(3) HELD no later than	February 7, 2009
11	Letter of compliance as to CR 39.1 FILED by	February 14, 2009
12	A roster of Local Rule 39.1 mediators can be located on the Internet at www.wawd.uscourts.gov . If you do not have access to the Internet, please contact the Clerk's Office at 253-593-6581.	
13	Motions in limine should be FILED by	February 9, 2009
14	and NOTED on the motion calendar no later than the second Friday thereafter.	
15	Agreed pretrial order LODGED with the court by	February 20, 2009
16	Pretrial conference will be HELD at 8:30 a.m. on	February 27, 2009
17	(COUNSEL SHALL REPORT TO COURTROOM A)	
18	Trial briefs, proposed voir dire & jury instructions due **	February 27, 2009

19 **JURY INSTRUCTIONS See Local Civil Rule CR51. A Manual of Model Civil Jury
20 Instructions For the Ninth Circuit - Latest Edition should be used as the format for proposed jury
21 instructions. See www.wawd.uscourts.gov

22 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW need not be submitted
23 unless specifically requested by the Judge.

24 If any of the dates identified in this Order or the Local Civil Rules fall on a weekend or federal
25 holiday, the act or event shall be performed on the next business day. These are firm dates that can be

1 changed only by order of the Court.

2 CLAIM CONSTRUCTION PROCEDURES

3 The following procedures shall apply to all patent claim construction issues:

4 Asserted Claims and Preliminary Infringement Contentions

5 A party claiming patent infringement will serve on all parties a statement of the Asserted Claims
6 and Preliminary Infringement Contentions, which will include the following information: (1) the identity
7 of each claim of each patent alleged to be infringed; (2) the identity of the opposing party's accused
8 device/method/etc. by specific name/model number/etc. for each claim asserted; (3) a chart that identifies
9 specifically where each element of each asserted claim is found within each accused device/method/etc.;
10 (4) whether each element is literally or equivalently infringed; and (5) the priority date to which each
11 asserted claim allegedly is entitled, if priority is an issue.

12 Preliminary Invalidity Contentions

13 A party opposing a claim of infringement on the basis of invalidity shall serve on all parties a
14 statement of its Preliminary Invalidity Contentions including: (1) the identity of prior art that allegedly
15 anticipates each asserted claim or renders it obvious; (2) whether each piece of prior art anticipates or
16 renders obvious the asserted claims; (3) a chart that identifies where in each piece of prior art each
17 element of each asserted claim is found; and (4) any grounds for invalidity based on indefiniteness,
18 enablement, or written description under 35 U.S.C. § 112.
19

20 Expert Reports

21 If the parties wish to present expert testimony at the claim construction hearing, the parties will
22 disclose expert reports related to claim construction by the date established in the Scheduling Order.
23 Rebuttal expert reports will be exchanged 30 days later. These dates do not affect the more general
24 expert report deadlines included in this Scheduling Order.
25

1 Proposed Terms and Claim Elements and Preliminary Claim Chart

2 At some point prior to the formulation of the preliminary claim chart, the parties will exchange a
3 list of Proposed Terms and Claim Elements, which will include each term that each party contends the
4 Court should construe. Each party will also identify any claim term that it contends should be governed
5 by 35 U.S.C. § 112(6) as a means-plus-function or step-plus-function limitation. The parties will then
6 meet to identify terms in genuine dispute and facilitate the preparation of the Joint Claim Chart.

7 The parties will then exchange preliminary proposed constructions for each disputed claim term
8 that the parties have collectively identified. Each party will also provide a preliminary identification of any
9 extrinsic evidence, along with a copy of it, as well as a brief description of any witness' proposed
10 testimony that supports its construction of the claim. The parties will then meet to narrow the issues and
11 finalize the Joint Claim Chart and Prehearing Statement.

12
13 Joint Claim Chart and Prehearing Statement

14 All allegations of infringement and invalidity will be filed with the Court in the form of a
15 Prehearing Statement. After that time, the Court will not consider new allegations of infringement or
16 invalidity without the asserting party showing good cause. A Joint Claim Chart will also be filed, in the
17 format provided in the Sample Joint Claim Chart found at the end of this Order. This Chart will include
18 each party's proposed construction of disputed terms, together with specific references to the relevant
19 portions of the specification and the prosecution history, and descriptions of the extrinsic evidence to be
20 used. The parties will attach to the Joint Claim Chart copies of all patents in dispute, together with the
21 relevant prosecution history. These documents need not be resubmitted upon briefing. The parties will
22 have the complete prosecution history available at the Court's request. In addition, the parties will
23 indicate whether any witnesses are to be called, and if so, their identities. For expert witnesses, the party
24 calling the expert will provide a summary of the opinion to be offered.

25 The Court expects the terms to be truly in dispute, and further expects that the preparation of the
26

1 Preliminary and Joint Claim Charts will narrow the terms in dispute. A party is not allowed to propose a
2 construction when the other party is unable to respond without leave of court (e.g., in a Response Brief).
3 If a party must propose a new construction, the Joint Claim Chart must be amended to reflect that
4 change. At the time of the Hearing, the Joint Claim Chart before the Court must reflect the current
5 proposed constructions.

6
7 Court-Appointed Neutral Expert and Claim Construction Hearing

8 The Court will consider appointment of a Rule 706 Court-Appointed neutral expert, and directs
9 the parties to confer within 30 days of this Order and advise the Court as to their position on whether the
10 appointment of a Rule 706 expert is appropriate.

11 The claim construction hearing will be set for one full trial day (5 hours). If more or less time is
12 required, the parties are instructed to inform Dara Kaleel at (253) 882-3824.

13 PLEASE NOTE: The Court will **not** rule on dispositive motions that raise issues of claim
14 construction prior to the Hearing, unless special circumstances warrant and leave of Court is obtained in
15 advance of filing.

16
17 COOPERATION

18 As required by CR 37(a), all discovery matters are to be resolved by agreement if possible.
19 Counsel are further directed to cooperate in preparing the Joint Claim Chart and final pretrial order in the
20 format required by CR 16.1, except as ordered below.

21
22 MEDIATION

23 The Court finds this case is appropriate for mediation under Local Rule 39.1. The parties are
24 directed to conduct mediation upon completion of discovery as hereinafter provided.

25 IT IS ORDERED that the parties exchange written offers for settlement and that

1 counsel meet and discuss settlement within six months of this Order.

2 IT IS ORDERED that the mediator be selected by the cutoff date for completion of discovery.
3 The parties are advised that the Court's home page at www.wawd.uscourts.gov contains a roster of
4 approved mediators and their profiles. This information is also available for viewing in Seattle and
5 Tacoma at the intake counter of the Clerk's Office. In the alternative, the parties may select any mediator
6 that is agreeable to the parties whether or not such person is on the District roster. Counsel are directed
7 to file with the Court the name of the mediator as soon as one is selected. The mediation will be
8 conducted at such time or times as the mediator may determine. Mediation shall be completed no later
9 than thirty (30) days prior to the trial date. The parties are strongly encouraged to mediate prior to
10 completion of discovery.

11 12 EXHIBITS

13 The original and one copy of any exhibits to be used at the Markman hearing and/or trial are to be
14 delivered to chambers five days before the trial date. Each exhibit shall be clearly marked. Exhibit tags are
15 available in the Clerk's Office. Duplicate documents shall not be listed twice: once a party has identified
16 an exhibit in the pretrial order, any party may use it. Each set of exhibits shall be submitted in a three-ring
17 binder with appropriately numbered tabs.

18 19 SETTLEMENT

20 If this case is settled, please advise Dara Kaleel, Courtroom Deputy to Judge Bryan immediately
21 at (253) 882-3824. If this case is not settled, it will go to trial on the date set or as soon thereafter as the
22 court is available.

23 The foregoing Minute Order entered by /Dara Kaleel, Deputy Clerk, **BY DIRECTION OF THE**
24 **HONORABLE ROBERT J. BRYAN, UNITED STATES DISTRICT JUDGE.**

Sample Joint Claim Chart

U.S. Patent X,XXX,123 (“123 Patent”)

Claim Language (Disputed Terms in Bold)	Plaintiff’s Proposed Construction and Evidence in Support	Defendant’s Proposed Construction and Evidence in Support
<p>1. A method for mending fences</p> <p>[or]</p> <p>fences</p> <p>Found in claim numbers:</p> <p>‘123 Patent: 1, 2</p>	<p>fence</p> <p><u>Proposed Construction:</u> A structure that keeps things out.</p> <p><u>Intrinsic Evidence:</u> ‘123 Patent col __:__ (“keeps stray animals out”); Prosecution History at __ (“this method is more effective than the prior art in reinforcing the fence, and therefore in keeping out unwanted intruders”).</p> <p><u>Dictionary/Treatise Definitions:</u> Merriam-Webster Dictionary (“a barrier intended to prevent . . . intrusion”).</p> <p><u>Extrinsic Evidence:</u> R. Frost Depo. at xx:xx (“Good fences make good neighbors”); ‘000 Patent at col __:__; Vila Decl. at ¶ __. fence</p>	<p>fence</p> <p><u>Proposed Construction:</u> A structure that keeps things in.</p> <p><u>Intrinsic Evidence:</u> ‘123 Patent col __:__ (“keeps young children from leaving the yard”); Prosecution History at __ (“dilapidated fences meant to pen in cattle are particularly amenable to this method”).</p> <p><u>Dictionary/Treatise Definitions:</u> Random House Dictionary (“a barrier enclosing or bordering a field, yard, etc. ”).</p> <p><u>Extrinsic Evidence:</u> C. Porter Depo. at xx:xx (“Don’t fence me in”); ‘111 Patent at col __:__; Thomas Decl. at ¶ __.</p>

(or similar format that provides side-by-side comparison)